Remarks

This amendment is in response to the office action dated July 11, 2003. Claims 1-4, 10-11, 14, 16-18, 22-24 as amended, and new claims 43-58 remain in the application.

In the Office Action the examiner initially rejected claim 30 pursuant to 35 U.S.C. 112 as being indefinite. Applicant has amended claim 30 herein which applicant believes overcomes the objection as to form. Applicant respectfully asserts that the amendment with respect to claim 30 by correction as to form, has not modified the scope of the claim as originally presented for consideration and does not modify any available range of equivalents for the claim. The reason for the claim amendment is to utilize the identical language for the claim element of "warning light signals" consistently throughout the claim and is not related to prior art. Applicant respectfully requests reconsideration and allowance of claim 30 herein.

In the Office Action the examiner next rejected claims 1-4, 10-11, 14, 16-18, and 22-42 pursuant to 35 U.S.C. 103(a) over Meinershagen U.S. Patent No. 4,556,862 in view of Walton U.S. Patent No. 5,966,073.

Applicant respectfully traverses the rejection of claims 1-4, 10-11, 14, 16-18, and 22-42 as amended herein pursuant to 35 U.S.C. 103(a) for the following reasons:

The Meinershagen U.S. Patent No. 4,556,862 teaches the use of supplemental lighting only proximate to the front and rear, but not the sides, of a vehicle.

The purpose of the teachings of the '862 patent and/or the problem to be solved by the '862 patent is to supplement the illumination of the left and right turn signals, the brake lights, and/or the slow moving traffic signal through the hazard light of a standard passenger vehicle.

This purpose is obtained and/or the problem is taught to be solved by the placement of non-LED light sources along only the front and back of a vehicle and the electrical connection of a flasher circuit to the turn signal circuits, the brake circuits, the hazard circuits, and/or the parking light circuit of a vehicle. Supplemental illumination is provided upon a vehicle operator engaging any of the turn signals, hazard signal, brake light signal, and/or parking light circuits.

The '862 patent does not mention or enable the use of light emitting diode light sources for warning signal lights used on emergency vehicles and/or utility vehicles. In addition, the '862 patent does not mention or enable the use of light emitting diode light sources

illuminated in patters of warning light signals. Further, the '862 patent does not mention or enable the use of a controller which is independent of a turn signal light circuit and/or a brake light circuit for a vehicle.

The Walton U.S. Patent No. 5,966,073 also teaches supplemental lighting for turn signals and brake lights for passenger vehicles. The purpose of the Walton '073 patent and/or the problem to be solved by the '073 patent is to supplement the illumination of the left and right turn signals and/or the brake lights of a standard passenger vehicle.

This purposes is obtained and/or the problem is taught to be solved by utilizing supplemental brake, running, and/or turn signal lights as tied into the existing turn signal circuits, brake circuits, and/or running light circuits, where the supplemental lights improve visibility by decreasing or extinguishing illumination of conflicting light signals. For example, a left turn signal will increase the illumination of the supplemental left turn lights and simultaneously decrease or extinguish the running lights for the vehicle. When the left turn signal returns to a normal non-operational mode, then the running lights will be returned to an on position to the normal running operational mode. The Walton '073 patent teaches the supplemental use of additional lights during engagement of a standard existing light signal and the decrease of conflicting illumination, by decreasing power or extinguishing the lights of other portions of a vehicle.

Walton '073 only in passing refers or mentions the use of light emitting diode light sources without an enabling disclosure. The Walton '073 patent does not mention or enable the use of light emitting diode light sources within warning signal lights used on emergency vehicles and/or utility vehicles.

THE LEGAL STANDARD

With respect to 35 U.S.C. §103, the Federal Circuit has set out at least five principles regarding obviousness determinations under §103. *Hodosh v. Block Drug Co.*, 786 F.2d 1136, 229 USPQ 182, 187 (Fed. Cir. 1986). In *Hodosh*, the Federal Circuit stated:

> Our comments on the district court's obviousness determination generally include the following tenets of patent law that must be adhered to when applying §103:

(1) the claimed invention must be considered as a whole (35 U.S.C. 103; see, e.g., *Jones v. Hardy*, 727 F.2d 1524, 1529, 220 USPQ 1021, 1024 (Fed. Cir. 1984) (though the difference between claimed invention and prior art may seem slight, it may also have been the key to advancement of the art));

(2) the references must be considered as a whole and suggest the desirability and thus the obviousness of making the combination (see, e.g., *Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co.*, 730 F.2d 1452, 1462, 221 USPQ 481 488 (Fed. Cir. 1984));

(3) the references must be viewed without the benefit of hindsight vision afforded by the claimed invention (e.g., *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983));

(4) "ought to be tried" is not the standard with which obviousness is determined (*Jones, supra*, 727 F.2d at 1530, 220 USPQ at 1026); and

(5) the presumption of validity remains constant and intact throughout litigation (35 U.S.C. 285; e.g., *American Hoist & Derrick Co. v. Sowa & Sons, Inc.*, 725 F.2d 1350, 1359-60, 220 USPQ 763, 770 (Fed. Cir. 1984)).

Furthermore, when an attempt is made to combine two references A and B, or to change a single reference, a prima facia case of obviousness has not been established if:

(1) A and B could not or would not be physically combined in an operative fashion to produce the desired result by a person of ordinary skill without use of the patentee's teachings. *In re Linnner*, 458 F.2d 1013, 173 USPQ 560, 562 (CCPA 1972); *In re Regel*, 526 F.2d 1399, 199 USPQ 136 (CCPA 1975); *In re Jansson*, 609 F.2d 996, 203 USPQ 976 (CCPA 1979).

(2) The intended purpose or function of either A or B, or both, is destroyed by their combination. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

(3) No suggestion why or reasons or motivation for combining A and B appears explicitly or implicitly in either A or B, or both in combination. *In re Clinton*, 527 F.2d 1226, 188 USPQ 265 (CCPA 1976). Obviousness can not be established by combining the teachings of the prior art to produce the claimed invention, absent a teaching or suggestion supporting the combination. *In re Fine*, 5 USPQ 2d, 1596 (1988) (Fed. Cir. 1989); see also *In re Laskowski*, 10 USPQ 2d 1397 (Fed. Cir. 1989).

(4) A and B are from such diverse arts (i.e., either or both are nonanalogous art to the claimed invention) that a person of ordinary skill in the claimed art would not look to those arts to solve the problem treated by the claimed invention. *In re Pagliaro*, 657 F.2d 1219, 210 USPQ 888 (CCPA 1981); *In re Wood*, 599 F.2d 1032, 202 USPQ 171 (CCPA 1979); *In re Horn*, 203 USPQ 969 (CCPA 1979).

(5) A and B do not teach the source of the problem and the recognition of the source of the problem is what is unobvious. *Eibel Process Co. v. Minnesota and Ontario Paper Co.*, 261 US 45 (1923); *In re Sponnoble*, 405 F.2d 578, 160 USPQ 237 (CCPA 1969); *In re Peehs*, 612 F.2d 1287, 204 USPQ 835 (CCPA 1980). *See Kayton*, 1 Patent Practice 5-28, 29 (1985).

In addition, in the recent case of *In re Dembiczak*, 50 U.S.P.Q.2d 1614 (CAFC 1999), the Court of Appeals for the Federal Circuit has stated that the ultimate determination of whether an invention is or is not obvious is a legal conclusion based upon underlying factual inquiries including:

(1) The scope and content of the prior art;

(2) The level of ordinary skill in the prior art;

(3) The differences between the claimed invention and the prior art; and

(4) Objective evidence of non-obviousness.

The Court of Appeals for the Federal Circuit went on to state that the analysis with respect to obviousness is required to be conducted "at the time the invention was made" to guard against entry into the "tempting but forbidden zone of hindsight". The Court of Appeals for the Federal Circuit went on to state that the "very ease with which the invention can be understood may prompt one to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher". The Court of Appeals for the Federal Circuit has stated that the case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references and that one of ordinary skill in the art would have been motivated to select the references and combine them, and it was error to not elucidate any factual teachings, suggestions, or incentives from the prior that

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showed the propriety of combination. The Federal Circuit in *Dembizcak* further stated that combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability which is the essence of hindsight.

The Meinershagen '862 reference individually and/or in combination with Walton '073 does not provide any suggestion, teaching, or disclosure as related to the provision of a warning light signal independent from a brake light, and/or turn signal, and/or standard vehicle hazard light. Further, Meinershagen '862 does not teach the use of light emitting diodes and the use of an independent controller to provide at least two different types of LED warning light signals in at least one pattern independent of the brake lights and/or turn signals.

The Walton '073 reference individually and/or in combination with the Meinershagen '862 reference does not provide any suggestion, teaching, or disclosure as related to the provision of a warning light signal independent from a brake light, and/or turn signal, and/or standard vehicle hazard light. Further, Walton '073 does not teach the use of light emitting diodes, and the use of an independent controller to provide at least two different types of LED warning light signals in at least one pattern independent of the brake lights and/or turn signals.

No suggestion or teaching is provided in the Meinershagen '862 reference to combine with the Walton '073 reference or any other prior art to provide Applicant's claimed invention herein.

No suggestion or teaching is provided in the Walton '073 reference to combine with the Meinershagen '862 reference or any other prior art to provide Applicant's claimed invention herein.

In addition, Meinershagen '862 and Walton '073 both are focused solely on the problem of enhancing brake light visibility, turn signal visibility, and/or standard vehicle hazard light visibility. Neither the Meinershagen '862 nor the Walton '073 references provide any teaching whatsoever with respect to the warning light signaling art associated with warning light signals generated from an emergency vehicle and/or a utility vehicle. Neither Meinershagen '862 nor Walton '073 addressed the problems associated with the use of LED's to provide combinations and/or patterns of LED light signals for use with emergency vehicles and/or utility

vehicles. Neither the Meinershagen '862 nor Walton '073 references teach solutions to the problems associated with the use of light emitting diodes to provide combinations and/or patterns of LED light signals for use with emergency vehicles and/or utility vehicles. Also, neither the Meinershagen '862 nor Walton /073 references teach any solution to the problem of the illumination of warning light signals independent of a brake light circuit and/or a turn signal circuit for a vehicle. Therefore, combination of Meinershagen '862 with Walton '073 is improper for an assertion of obviousness pursuant to 35 U.S.C. §103 with respect to Applicant's claims as amended herein.

Further, the combination of Walton '073 to the Meinershagen '862 reference may not be made in an operative fashion to provide the invention claimed by Applicant herein. Specifically, turn signal lights and brake lights are not warning signal lights as disclosed and claimed herein. The Walton '073 reference teaches that a light signal (such as a running light) will be extinguished and may be changed in color when the brakes are applied, or the turn signal is activated. The teachings of Walton '073 are inconsistent with respect to Applicant's invention, in that, the running lights, brake lights, and/or turn signals, are not extinguished upon the illumination of a warning light signal as generated by the independent controller. Any warning light signal as illuminated by the controller of Applicant's claimed invention will not diminish the intensity, or cause a brake light and/or turn signal indicator to become extinguished, upon the application of brakes or upon the engagement of a turn signal. In addition, the teachings of Walton '073 would destroy Applicant's claimed invention herein. Emergency warning signal lights maximize visibility of a light signal. Warning light signals are not diminished or extinguished during the application of brakes or the activation of turn signals as taught in the '073 reference.

Applicant's invention is not analogous to the conflict resolution of Walton '073 where certain signals are diminished and replaced to enhance visibility of a desired type of signal. Conflict resolution with respect to the dimming or extinguishing of light signals in favor of another light signal is not relevant to Applicant's claimed invention. Applicant's invention does not replace, diminish, or extinguish the running lights, brake lights, or turn signal lights when the controller or warning light signal is activated.

Neither the Meinershagen '862 nor the Walton '073 references provide enabling

disclosure with respect to the use of light emitting diodes in association with warning light signals. Further, both the electrical circuits as disclosed in the Meinershagen '862 and Walton '073 references would require complete reengineering and replacement for use in the generation of LED warning light signals for emergency vehicles and utility vehicles which are independent from the brake circuit, turn signal circuit, and/or hazard light circuit of a standard vehicle.

For the foregoing reasons, Applicant respectfully requests reconsideration and allowance of claims 1-4, 10-11, 14, 16-18, 22-42, as amended and new claims 43-58 herein. Applicant respectfully asserts that the claims herein are now in condition for allowance. Early action to that effect is earnestly solicited. Should the Examiner have any questions concerning this amendment, then he is cordially invited to contact the undersigned by telephone, facsimile, and/or E-mail at the below identified addresses.

Applicant has enclosed herein a Petition for Extension of Time within this matter. Applicant respectfully requests that if any fees are required for the submission of this response, and such fees are not included with the response, that any such fees be charged to Applicant's Deposit Account No. 22-0350.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: October 23, 2003

By: _____

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